BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Jane K. Lancaster Dist. 3, Map 109J, Group F, Control Map 109J, Parcel 002 Residential Property Tax Year 2005	)) Hamilton County)))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$17,700	$59,400	$77,100	$19,275

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on December 20, 2005 in Chattanooga, Tennessee. In attendance at the hearing were Jane K. Lancaster, the appellant, and Hamilton County Property Assessor's representative Randy Johnston.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 4233 Crestview Drive in Red Bank, Tennessee.

I. Jurisdiction

The administrative judge finds that the first issue which must be addressed concerns jurisdiction. This issue arises from the fact that the taxpayer's appeal to the Hamilton County Board of Equalization was rejected as untimely.

In accordance with Tenn. Code Ann. § 67-5-508(a)(2) the assessor published a notice in the local newspaper which provided in relevant part as follows:

> The Hamilton County Board of Equalization will hold its annual organization meeting Wednesday, June 1, 2005, at 9:00 a.m. at 6135 Heritage Park Drive. The Board will accept appeals for tax year 2005 only until the last day of the 2005 regular session, which will be June 30, 2005. The Board will hold hearings during the month of June, as needed. Failure to appeal the assessment to the Board during this time period may result in the assessment becoming final without further right of appeal.
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> Persons desiring to appear before said Board must file written application on forms provided by the Board, which may be secured at 6135 Heritage Park Drive. The Board will determine whether the assessments will be raised or lowered.

The administrative judge finds Ms. Lancaster secured an appeal form from the county board of equalization and postmarked the completed form on or before June 30, 2005.[1] The appeal form was received on July 1, 2005 and rejected as untimely.

The administrative judge finds that Tenn. Code Ann. § 67-1-707 provides in relevant part as follows:

> (a) Any tax report, claim, return, statement, remittance or other tax document required or authorized to be filed with or any payment made to the state *or any political subdivision* thereof, which is:
>
> > (1) Transmitted through the United States mail or any alternative delivery service as authorized by § 7502 of the Internal Revenue Code, shall be deemed filed and received by the state *or political subdivision* on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it;
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> [Emphasis supplied]

The administrative judge finds that like the Hamilton County Board of Equalization, the State Board of Equalization traditionally considered an appeal form filed on the date it was actually received. On December 14, 1995, however, the Assessment Appeals Commission repudiated the long standing view that "filed" means actually received rather than postmarked. The Commission ruled in *CBM Ministries of East Tenn., Inc.* (Carter County, Exemption Claim) in pertinent part as follows:

> The property owner applied for exemption for its campground ministries property . . . and the staff attorney . . . designated to act on exemption applications rendered an initial determination denying exemption and sent notice of the denial to the applicant on January 12, 1995. The applicant appealed the denial by filing the required appeal form with the Board, and the form was postmarked within the ninety day deadline to appeal but was received at the Board office beyond the deadline, on April 13, 1995.
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> The administrative judge to whom the appeal was assigned dismissed the appeal because it was filed outside the statutory deadline, relying on a procedural rule generally applicable to Board appeals which provides that date of filing means date of receipt at the Board offices. We affirmed the dismissal after a hearing on November 29, 1995, but it appears that basis of our ruling conflicts with T.C.A. § 67-1-107, which establishes a uniform "mailbox" rule for filing of tax documents with state or local governments.

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[1] It is unclear exactly which day the form was postmarked. Given the fact the assessor's office processed the appeal on July 1, 2005, the appeal could not have been mailed after June 30, 2005. Unfortunately, the envelope containing the appeal form was not introduced into evidence. The appeal form indicates it was mailed to Ms. Lancaster on June 17, 2005 and signed by Lancaster on June 24, 2005.

> By reason of the foregoing, on our own motion, it is ORDERED, that our decision in the hearing of this matter of November 29, 1995 is reconsidered and the matter is remanded for a haring on the merits before an administrative judge assigned by the executive secretary.

The administrative judge finds that since Tenn. Code Ann. § 67-1-107 applies to political subdivisions the taxpayer's appeal must be considered timely filed. Accordingly, the administrative judge finds the State Board of Equalization has jurisdiction over this appeal.

II. Value

The taxpayer contended that subject property should be valued at $62,000. In support of this position, the taxpayer argued that the current appraisal of subject property does not achieve equalization as evidenced by the assessor's decision to appraise two comparable homes and one larger home in the immediate area at $57,700, $65,200 and $70,100 respectively. In addition, the taxpayer testified about the sale of a duplex and more desirable home across the street for $55,000 and $86,000 respectively. Moreover, the taxpayer testified that two dilapidated duplexes are located in front of subject property, one of which sold for $50,000. Finally, the taxpayer stated that although the assessor has appraised her home as having central heat and air, the system was not installed until April of 2005.

The assessor contended that subject property should be valued at $77,100. In support of this position, five comparable sales were introduced into evidence. Mr. Johnston maintained that the comparables support a value range of $76,400 to $82,400 and should be correlated at the current appraised value of $77,100.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $67,000 based upon the preponderance of the evidence.

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in *Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982), holds that "as a matter of law property in Tennessee is required to be valued and equalized according to the 'Market Value Theory'." As stated by the Board, the Market Value Theory requires that property "be appraised annually at full market value and equalized by application of the appropriate appraisal ratio . . ." *Id.* at 1.

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

> In contending the entire property should be appraised at no more than $60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more underappraised than average does not entitle him to similar treatment. Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not adequately indicated how the properties compare to his own in all relevant respects. . . .

Final Decision and Order at 2. See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were underappraised . . ." Final Decision and Order at 3.

The administrative judge would normally place greatest weight on Mr. Johnston's analysis insofar as he focused on comparable sales and adjusted those sales in accordance with generally accepted appraisal practices. In this case, however, the administrative judge finds that Ms. Lancaster's testimony and cross-examination of Mr. Johnston established that his analysis must be modified in several areas.

The administrative judge would initially observe that January 1, 2005 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The administrative judge finds Ms. Lancaster's unrefuted testimony indicated that the central heat and air system reflected on the property record card was not installed until April 2005.

The administrative judge finds Ms. Lancaster was understandably more familiar with Mr. Johnston's comparables than he was. The administrative judge finds Ms. Lancaster's testimony and cross-examination of Mr. Johnston established that his analysis and/or the assessor's records do not reflect certain amenities that certainly influenced the various sales prices. For example, sale #1 has a full basement and finished upstairs with a bath. Similarly, sale #4 has a garage/apartment behind it. Moreover, Ms. Lancaster legitimately noted that sale #2 was constructed in 1995 whereas subject property was constructed in

1953. Finally, Ms. Lancaster persuasively argued that the $2,500 site value adjustment to sale #5 appears inadequate given the assessor's decision to value the same lot at $29,700 in conjunction with the 2005 countywide reappraisal program.

The administrative judge finds that if Mr. Johnston's sales comparison approach was modified to reflect the foregoing, a significantly lower value would obviously result. Absent additional evidence, the administrative judge finds that the preponderance of the evidence supports adoption of a value of $67,000.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$17,700	$49,300	$67,000	$16,750

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of January, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Jane K. Lancaster
Bill Bennett, Assessor of Property